

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

BYTEMARK, INC.

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v.

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Case No. 2:16-CV-0543-JRG-RSP

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MASABI LTD.

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**AMENDED DOCKET CONTROL ORDER**

In accordance with the scheduling conference held in this case, it is hereby ORDERED that the following schedule of deadlines is in effect until further order of this Court:

December 4, 2017	*Jury Selection – 9:00 a.m. in <b>Marshall, Texas</b> before Judge Rodney Gilstrap
November 7, 2017	*Pretrial Conference – 9:00 a.m. in <b>Marshall, Texas</b> before Judge Roy Payne
November 1, 2017	*Notify Court of Agreements Reached During Meet and Confer  The parties are ordered to meet and confer on any outstanding objections or motions <i>in limine</i> . The parties shall advise the Court of any agreements reached no later than 1:00 p.m. three (3) business days before the pretrial conference.
October 30, 2017	*File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, and Responses to Motions <i>in Limine</i>
October 23, 2017	*File Notice of Request for Daily Transcript or Real Time Reporting.  If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Shelly Holmes, at shelly_holmes@txed.uscourts.gov.
October 16, 2017	File Motions <i>in Limine</i>  The parties shall limit their motions <i>in limine</i> to issues that if improperly introduced at trial would be so prejudicial that the Court could not alleviate the prejudice by giving appropriate instructions to the jury.

October 16, 2017	Serve Objections to Rebuttal Pretrial Disclosures
October 2, 2017	Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures
September 25, 2017	Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof
August 28, 2017	<p>*File Dispositive Motions or Motions to Strike Expert Testimony (including <i>Daubert</i> Motions)</p> <p>No dispositive motion or motion to strike expert testimony (including a <i>Daubert</i> motion) may be filed after this date without leave of the Court.</p>
August 28, 2017	Deadline to Complete Expert Discovery
August 7, 2017	Serve Disclosures for Rebuttal Expert Witnesses
July 17, 2017	Deadline to Complete Fact Discovery and File Motions to Compel Discovery
July 17, 2017	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof
June 28, 2017	<p>Deadline to Complete Mediation</p> <p>The parties are responsible for ensuring that a mediation report is filed no later than 5 days after the conclusion of mediation.</p>
June 21, 2017	Comply with P.R. 3-7 (Opinion of Counsel Defenses)
May 31, 2017	*Claim Construction Hearing – 9:00 a.m. in <b>Marshall, Texas</b> before Judge Roy Payne
May 17, 2017	*Comply with P.R. 4-5(d) (Joint Claim Construction Chart)
May 10, 2017	*Comply with P.R. 4-5(c) (Reply Claim Construction Brief)
May 3, 2017	Comply with P.R. 4-5(b) (Responsive Claim Construction Brief)
April 19, 2017	<p>Comply with P.R. 4-5(a) (Opening Claim Construction Brief) and Submit Technical Tutorials (if any)</p> <p>Good cause must be shown to submit technical tutorials after the deadline to comply with P.R. 4-5(a).</p>

April 19, 2017	<p>Deadline to Substantially Complete Document Production and Exchange Privilege Logs</p> <p>Counsel are expected to make good faith efforts to produce all required documents as soon as they are available and not wait until the substantial completion deadline.</p>
April 5, 2017	Comply with P.R. 4-4 (Deadline to Complete Claim Construction Discovery)
March 29, 2017	File Response to Amended Pleadings
March 15, 2017	<p>*File Amended Pleadings</p> <p>It is not necessary to seek leave of Court to amend pleadings prior to this deadline unless the amendment seeks to assert additional patents.</p>
March 8, 2017	Comply with P.R. 4-3 (Joint Claim Construction Statement)
February 15, 2017	Comply with P.R. 4-2 (Exchange Preliminary Claim Constructions)
January 25, 2017	Comply with P.R. 4-1 (Exchange Proposed Claim Terms)
October 11, 2016	Comply with P.R. 3-3 & 3-4 (Invalidity Contentions)
September 20, 2016	<p>*File Proposed Protective Order and Comply with Paragraphs 1 &amp; 3 of the Discovery Order (Initial and Additional Disclosures)</p> <p>The Proposed Protective Order shall be filed as a separate motion with the caption indicating whether or not the proposed order is opposed in any part.</p>
September 13, 2016	<p>*File Proposed Docket Control Order and Proposed Discovery Order</p> <p>The Proposed Docket Control Order and Proposed Discovery Order shall be filed as separate motions with the caption indicating whether or not the proposed order is opposed in any part.</p>
September 6, 2016	Join Additional Parties
September 2, 2016	*File Notice of Mediator
August 16, 2016	Comply with P.R. 3-1 & 3-2 (Infringement Contentions)

(\*) indicates a deadline that cannot be changed without showing good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.

### **ADDITIONAL REQUIREMENTS**

**Notice of Mediator:** The parties are to jointly file a notice that identifies the agreed upon mediator or indicates that no agreement was reached. If the parties do not reach an agreement, the Court will appoint a mediator. The parties should not file a list of mediators to be considered by the Court.

**Summary Judgment Motions, Motions to Strike Expert Testimony, and Daubert Motions:** For each motion, the moving party shall provide the Court with two (2) copies of the completed briefing (opening motion, response, reply, and if applicable, surreply), excluding exhibits, in D-three-ring binders, appropriately tabbed. All documents shall be single-sided and must include the CM/ECF header. For expert-related motions, complete digital copies of the relevant expert report(s) and accompanying exhibits shall be submitted on a single flash drive. These copies shall be delivered as soon as briefing has completed.

**Indefiniteness:** In lieu of early motions for summary judgment, the parties are directed to include any arguments related to the issue of indefiniteness in their *Markman* briefing, subject to the local rules' normal page limits.

**Motions for Continuance:** The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:

- (a) The fact that there are motions for summary judgment or motions to dismiss pending;
- (b) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
- (c) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

**Amendments to the Docket Control Order ("DCO"):** Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion to amend the DCO shall include a proposed order that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines and the changes, if any, to those deadlines, rather than needing to also refer to an earlier version of the DCO.

**Proposed DCO:** The Parties' Proposed DCO should also follow the format described above under "Amendments to the Docket Control Order ('DCO')."

**SIGNED this 7th day of October, 2016.**

  
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ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE